4-19-2016

State v. Mehalos Respondent's Brief Dckt. 43528

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 43528**
Plaintiff-Respondent,	)	
	)	**Ada Co. Case No.**
v.	)	**CR-2014-14835**
	)	
JAMES ROCKY MEHALOS,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE STEVEN J. HIPPLER
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

James Rocky Mehalos appeals from the judgment entered upon his conditional guilty plea to possession of methamphetamine. On appeal, Mehalos challenges the denial of his motion to suppress.

Statement Of The Facts And Course Of The Proceedings

While investigating an unrelated matter, a Boise police officer stopped Mehalos for speeding in a residential neighborhood. (Tr., p. 36, L. 6 – p. 41, L. 23.) The officer questioned Mehalos and learned that his license was suspended and that he did not have insurance. (Tr., p. 43, Ls. 21-25.) Mehalos, who exhibited signs of drug use, also informed the officer that he recently completed probation. (Tr., p. 45, L. 13 – p. 46, L. 6, p. 59, L. 20 – p. 60, L. 10.) The officer requested K9 backup while she continued her investigation. (Tr., p. 45, Ls. 4-9.)

Mehalos informed the officer that he had a knife, and the officer noticed another knife clipped to a backpack in the car. (Tr., p. 43, Ls. 4-14.) As a safety precaution, another officer then administered a pat-down search of Mehalos. (Tr., p. 29, Ls. 21-24.)

The state adopts the findings of the district court as to what occurred next:

> Once the pat-down was completed, Officer Matheus continued inquiring about the reasons for Defendant's suspended driver's license and lack of insurance since he had, up to that point, not given a clear reason for such. Officer Matheus was still deciding whether she was going to arrest or merely cite him for driving without privileges and wanted to get additional information from him. Defendant, however, was still unable to give her a direct answer. Approximately 7.5 minutes into the stop, she asked him to

> sit on the curb and requested consent to search his backpack, explaining that he could decline. Defendant consented and Officer Matheus began her search, turning off her recording device. By this point, a little less than 8 minutes had elapsed from the initiation of the stop.

(R., pp. 105-106 (footnotes omitted).) The officer discovered more knives and an expandable baton in the backpack, and while she searched it, the K9 unit arrived. (Tr., p. 76, L. 2 – p. 77, L. 3.) The K9 entered the open vehicle and alerted on a bag inside the car, which contained marijuana, methamphetamine, and paraphernalia. (Tr., p. 98, L. 1 – p. 99, L. 19.)

The state charged Mehalos with possession of methamphetamine, possession of marijuana, possession of drug paraphernalia, and driving without privileges. (R., pp. 38-39.) Mehalos moved to suppress the State's evidence, claiming it was obtained through an illegal search and seizure. (R., pp. 69-76.) The district court denied that motion following an evidentiary hearing. (R., pp. 103-115.) Mehalos subsequently entered a conditional guilty plea to one count of possession of methamphetamine, reserving his right to appeal the denial of his motion to suppress. (R., p. 116.) The district court accepted that plea, dismissed the remaining charges against him, and imposed a unified sentence of five years, fixing two years, and retaining jurisdiction. (R., pp. 117, 136-140.) Mehalos timely appealed. (R., pp. 144-148.)

ISSUE

Mehalos states the issue on appeal as:

> Did the district court err when it denied Mr. Mehalos' motion to suppress?

(Appellant's brief, p. 7.)

The state rephrases the issue as:

Has Mehalos failed to show error in the denial of his suppression motion?

ARGUMENT

Mehalos Has Failed To Show Error In The Denial Of His Suppression Motion

A. Introduction

Mehalos appeals the denial of his suppression motion on three grounds—first, he denies that he consented to the search of his backpack. (Appellant's brief, pp. 10-11.) He then claims that even if such consent was given, it was later revoked. (Appellant's brief, pp. 11-12.) Finally, he argues that if no consent was given, or if such consent was revoked, then the search of the backpack was accordingly unlawful, and unlawfully extended the duration of the stop. (Appellant's brief, p. 12.) These arguments fail because substantial evidence supports the district court's conclusions that the backpack search was consented to, and did not unlawfully extend the stop. Consequently, Mehalos has failed to show that the district court erred in denying his motion to suppress.

B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court defers to the trial court's findings of fact unless clearly erroneous, but exercises free review of the trial court's determination as to whether constitutional standards have been satisfied in light of the facts. State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009); State v. Fees, 140 Idaho 81, 84, 90 P.3d 306, 309 (2004). In particular, whether a consent to search was voluntary is a question of fact, the determination of which is reviewed on appeal for clear error. State v. Reynolds, 146 Idaho 466, 472, 197 P.3d 327, 333 (Ct. App. 2008); State v. Stewart, 145 Idaho 641, 648, 181 P.3d 1249, 1256 (Ct. App. 2008). If findings

are supported by substantial evidence in the record, those "[f]indings will not be deemed clearly erroneous." Stewart, 145 Idaho at 648, 181 P.3d at 1256 (quoting State v. Jaborra, 143 Idaho 94, 98, 137 P.3d 481, 485 (Ct. App. 2006)).

C. Mehalos Has Failed To Show That The District Court Clearly Erred In Finding That He Voluntarily Consented To The Search of His Backpack

A consented-to warrantless search does not violate the Fourth Amendment. Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (citations omitted); State v. Hansen, 138 Idaho 791, 796, 69 P.3d 1052, 1057 (2003); State v. Varie, 135 Idaho 848, 852, 26 P.3d 31, 35 (2001). Consent is valid if it is free and voluntary. Bustamonte, 412 U.S. at 225-26. The voluntariness of an individual's consent is a question of fact to be determined based upon the totality of the circumstances. Varie, 135 Idaho at 852, 26 P.3d at 35 (citing Bustamonte, 412 U.S. at 248-49). In order to be valid, consent cannot be the result of duress or coercion, either direct or implied. Bustamonte, 412 U.S. at 248. The mere presence of officers asking for consent to search is not sufficient, as a matter of law, to constitute improper police duress or coercion. See United States v. Watson, 423 U.S. 411 (1976). Instead, the court must consider all of the surrounding circumstances and find consent involuntary only if "coerced by threats or force, or granted only in submission to a claim of lawful authority …." State v. Hoisington, 104 Idaho 153, 158, 657 P.2d 17, 22 (1983) (quoting Bustamonte, 412 U.S. at 233).

Logically, "[c]onsent, once given, may also be revoked, for '[i]nherent in the requirement that consent be voluntary is the right of the person to withdraw

that consent.'" State v. Smith, 159 Idaho 15, ___, 355 P.3d 644, 654 (Ct. App. 2015). Consequently, after a defendant has revoked consent, officers may not act pursuant to the initial consent that was given. Id. But even after consent is revoked, it may be renewed. Id.

The district court applied these principles to this case, and determined that Mehalos voluntarily consented to the search of his backpack. Based on the investigating officer's testimony and a review of the incident audio, the court found that the officer "asked [Mehalos] to sit on the curb and requested consent to search his backpack, explaining that he could decline." (R., p. 106.) The court further found that "Defendant consented and Officer Matheus began her search, turning off her recording device." (R., p. 106.) The district court elaborated on these findings in a footnote:

> Defendant argued that he did not consent to the search of his backpack. Officer Matheus testified credibly that he did. The audio reveals that he waffled a bit with giving consent, but then stated "go ahead."

(R., p. 106, n. 6.)

Mehalos argues on appeal that the district court's consent findings are "clearly erroneous," because, he claims, "[e]ither [he] never gave his informed consent or [he] revoked his consent prior to the search being conducted." (Appellant's brief, p. 10.) Mehalos bases these claims on his own transcription of the audio recording of the pre-search conversation, which claims that after Mehalos said "go ahead" after the officer asked if she could search his backpack, Mehalos added, "Well I would say no, if I had a choice (inaudible)."

(Appellant's brief, p. 10.) Mehalos argues that his alleged statement—"Well I would say no, if I had a choice"—was an expression of not consenting to the search. He contends that he said this "once he was made aware that he had the lawful authority to deny Officer Matheus' request to search"; consequently, he concludes that the district court clearly erred in finding that he consented to the search. (Appellant's brief, pp. 10-11.)

Mehalos argues in the alternative that "[e]ven if Mr. Mehalos' initial statement of 'go ahead' constitutes valid consent, his subsequent statement, 'well I would say no, if I have a choice,' made immediately after he was told that he did have a choice, was his revocation of that consent." (Appellant's brief, p. 11.) He thus claims that the district court's consent findings were clearly erroneous on this secondary basis as well.

The district court correctly found that Mehalos consented to the search, and it based its finding on substantial evidence: the officer's testimony that Mehalos consented to the search, and a recording of the officer asking if she could search the backpack, to which Mehalos clearly responded "go ahead." (Tr., p. 65, Ls. 6-10, p. 72, L. 21 – p. 73, L. 2; R., pp. 103, 106, 113; Exh. 1, 7:02-7:47.) That testimony, corroborated by the audio recording, is substantial evidence supporting the district court's finding that Mehalos consented to the search. The audio in particular is a self-evident justification for the district court's conclusion that when Mehalos said "go ahead," he meant what he said—he was consenting to the search.

Moreover, Mehalos has not shown that the district erred in its analysis of whether valid consent was given. While the transcript that Mehalos constructs for his briefing is mostly accurate, the recording itself is quiet, low-fidelity, and difficult to hear. As it progresses it becomes less and less clear. As a result, transcribing the inaudible portions is an exercise in guesswork, and it is not at all conclusive from the recording that Mehalos actually said "[w]ell I would say no, if I have a choice." Mehalos, who testified at the suppression hearing, never testified that he said this. (See Tr., p. 109, Ls. 15-19.) Based on a review of the recording, it does not appear that Mehalos said that he would deny the requested search if he had a choice, and that portion is, at best, inaudible. (Exh. 1, 7:02-7:47.)

The district court made plain that it did in fact "carefully listen[]" to the audio, and it gave no indication in its decision that it somehow misheard or ignored any of it. (R., p. 103.) Given the district court's careful analysis, and the poor quality of the recording, it is far more likely that the district court found that the alleged revocation was never said, rather than was but went unnoticed by the court.

Lastly, even assuming that Mehalos did say "[w]ell I would say no, if I have a choice (inaudible)," the alleged statement is an unfinished clause, followed by continued conversation. (See Exh. 1, 7:02-7:47.) Assuming Mehalos started to

say that sentence, its ultimate meaning could easily change, depending on what was said in the approximately eight seconds of unintelligible audio that follow it.[1]

In any event, the tribunal in the best position to listen to the recording, decipher it, and weigh the totality of the evidence, is the fact finder—the district court. The district court reviewed the audio, heard Mehalos' audible consent to the search of his backpack, and did not hear any revocation of that consent. (See R., pp. 106, 113.) Substantial evidence therefore supports the district court's finding, based on the totality of the circumstances, that Mehalos consented to the search. Mehalos has failed to show that these findings were clear error.

D. Mehalos Has Failed To Show That The District Court Erred In Concluding That The Search Of His Backpack Did Not Unnecessarily Extend The Detention

It is well-settled that a police officer may, in compliance with the Fourth Amendment, make an investigatory stop of an individual if that officer entertains a reasonable suspicion that criminal activity is underway. State v. Gallegos, 120 Idaho 894, 896, 821 P.2d 949, 951 (1991); Terry v. Ohio, 392 U.S. 1 (1968).

[1] Keep in mind that while Mehalos is attempting to interpret ambiguous portions of audio, reasonable counter-interpretations of that same audio cut against his arguments. For example, based on the recording, one could similarly contend that Mehalos says "No, it's fine," just prior to the search—possibly reiterating his consent, or renewing any consent that was allegedly revoked. (Exh. 1, 7:30–7:31.) But whether Mehalos definitively said this is as speculative as whether he said "Well I would say no, if I have a choice," as he now insists he did. In any event, the district court is the finder of fact, and is necessarily the more appropriate entity to determine who said what, based on the muddled audio. And the district court determined—as Mehalos readily admits in his briefing—that Mehalos said "go ahead" when asked for his consent. Speculation as to what else was said, at this phase in the litigation, is subjective deconstruction of literally unclear evidence, and it does not show clear error below.

Such an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of a stop. State v. Pannell, 127 Idaho 420, 423, 901 P.2d 1321, 1324 (1995). The purpose of a stop, and the length of the stop to effectuate its purpose, is not necessarily fixed at the time of initiation, however. See, e.g., State v. Brumfield, 136 Idaho 913, 917, 42 P.3d 706, 710 (Ct. App. 2002) ("Although the vehicular stop began as one to investigate the operation of an unregistered automobile, information quickly developed which justified expansion of the detention to investigate a possible drug offense.") For example, the tolerable duration of a traffic stop includes not only the time it takes to effect "the seizure's 'mission'—to address the traffic violation that warranted the stop," but also the time it takes to "attend to related safety concerns." Rodriguez v. United States, 135 S. Ct. 1609, 1614, 1616 (2015) (noting that "[t]raffic stops are especially fraught with danger to police officers, so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely" (internal quotes and citations omitted)).

Here, the district court first noted that "a request for consent to search during or at the conclusion of an otherwise valid detention does not impermissibly extend a traffic stop." (R., p. 113 (citing to State v. Silva, 134 Idaho 848, 853, 11 P.3d 44, 49 (Ct. App. 2000).) The district court also reiterated that Mehalos consented to the backpack search, that he did so free of coercion, and that he was not under duress. (R., p. 113.) The district court accordingly concluded that:

> The extent of Officer Matheus' mission to that point consisted of addressing the traffic violation that warranted the stop, attend[ing]

> to related safety concerns, and conducting a consensual backpack search, none of which unreasonably prolonged the detention. Since the tasks tied to the stop, as it evolved, had not been completed—nor which, after only 16 minutes, reasonably should have been completed—when Kamo conducted the sniff, this Court finds Defendant's detention was not unlawfully expanded or prolonged to await the canine sniff.

(R., p. 114.)

Mehalos appears to argue that the stop was unlawfully extended based solely on the district court's finding regarding the backpack search. As he puts it, "[t]he district court's finding that the backpack search did not prolong the detention was based entirely upon the court's clearly erroneous finding that the search was consensual." (Appellant's brief, p. 12.) Mehalos reasons that because the search "was not based upon consent and was not related to any lawful purpose of the detention," that "therefore, the search unlawfully extended the detention." (Appellant's brief, p. 12.)

The district court correctly concluded that the stop was not unlawfully extended. It applied the totality of the facts to the law, and considered the initial stop, the officer's safety concerns, the search of the backpack, and the amount of time that transpired before the K9 unit arrived. (R., pp. 110-114.) On appeal, Mehalos does not challenge the initial stop (Appellant's brief, p. 5, n. 5), the pat-down search (Appellant's brief, p. 5, n. 6), or the length of time of the backpack search (Appellant's brief, p. 5, n. 7), but simply premises his unlawful-extension theory on the grounds that the backpack search was nonconsensual (Appellant's brief, pp. 12-13). But as explained above, the district court correctly found that the search was consensual. Indeed, the search was lawful not only as a

necessary safety precaution, per Rodriguez, but as a consented-to search, per Silva. Both rationales justify the court's conclusions that the entire investigation—to the extent it was prolonged as a result of the backpack search—was appropriate. Because the district court correctly found that the search itself was consented to, its conclusion that the ensuing investigation was lawfully extended was likewise correct.

Even if the district court incorrectly ruled that the search of the backpack was consensual, Mehalos has still not shown that the backpack search necessarily led to an unlawful detention. An investigative detention can be rendered a *de facto* arrest if it is more intrusive than necessary, e.g., State v. Pannell, 127 Idaho 420, 901 P.2d 1321 (1995) (use of handcuffs), or if it is of longer duration than reasonably necessary to confirm or dispel suspicion, e.g., State v. Buti, 131 Idaho 793, 796-97, 964 P.2d 660, 663-64 (1998). However, if the *de facto* arrest is justified by probable cause, the expansion of the stop as to its intrusiveness and duration is constitutionally reasonable. State v. Buell, 145 Idaho 54, 57, 175 P.3d 216, 219 (Ct. App. 2008) (citing United States v. Sokolow, 490 U.S. 1, 7 (1989); State v. Gallegos, 120 Idaho 894, 896, 821 P.2d 949, 951 (1991)).

Mehalos argues that "[a]t the end of Officer Matheus' unlawful eight minute search of Mr. Mehalos' backpack, Officer Reimers arrived with [the drug dog.] (Appellant's brief, p. 13.) He concludes that "[b]ecause the search of Mr. Mehalos' car and the ultimate discovery of the illegal items were the product of his unlawfully extended detention, the district court erred in denying his motion to

suppress." (Appellant's brief, p. 13.) His conclusion fails for what it overlooks: the fact that the officer had probable cause to arrest Mehalos for driving without privileges. (Tr., p. 48, Ls. 9-16, p. 49, L. 24 – p. 50, L. 3, p. 73, Ls. 19-24, p. 75, L. 21 – p. 76, L. 1.) Thus, even assuming the stop became impermissibly invasive or lengthy by Terry standards, it was a *de facto* arrest as a result—and by that point the officer had probable cause to justify a *de facto* arrest. To the extent the stop was expanded, that expansion was supported by probable cause, and was therefore constitutionally reasonable. In any event, Mehalos fails to show that the backpack search unnecessarily extended the stop, or that the drugs in the car were unlawfully seized.

CONCLUSION

The state respectfully requests this Court affirm the district court's order denying Mehalos' motion to suppress.

DATED this 19th day of April, 2016.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of April, 2016, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

JASON C. PINTLER
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